

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Caprock Cellular Limited Partnership

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File No. EB-07-SE-151  
NAL/Acct. No. 200832100022  
FRN: 0001665900

**ORDER**

**Adopted: March 13, 2008**

**Released: March 17, 2008**

By the Deputy Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and Caprock Cellular Limited Partnership ("Caprock"). The Consent Decree terminates the Bureau's investigation into Caprock's compliance with Sections 1.1307, 1.1308, and 1.1312 of the Commission's Rules ("Rules").<sup>1</sup>

2. The Enforcement Bureau and Caprock have negotiated the terms of a Consent Decree that would resolve these matters and terminate the investigation. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. Based on the record before us, we conclude that no substantial or material questions of fact exist with respect to this matter as to whether Caprock possesses the basic qualifications, including those related to character, to hold or obtain any FCC license or authorization.

4. After reviewing the terms of the Consent Decree, we find that the public interest would be served by adopting the Consent Decree and terminating the investigation.

5. Accordingly, **IT IS ORDERED**, pursuant to Section 4(i) of the Communications Act of 1934, as amended,<sup>2</sup> and the authority delegated by Sections 0.111 and 0.311 of Rules,<sup>3</sup> the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigatory proceeding **IS TERMINATED**.

7. **IT IS FURTHER ORDERED** that Caprock Cellular Limited Partnership shall make its voluntary contribution to the United States Treasury, as specified in the Consent Decree, by mailing a check or similar instrument payable to the order of the Federal Communications Commission, to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St.

<sup>1</sup> 47 C.F.R.. §§ 1.1307, 1.1308, and 1.1312.

<sup>2</sup> 47 U.S.C. § 154(i).

<sup>3</sup> 47 C.F.R. §§ 0.111 and 0.311.

Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

FEDERAL COMMUNICATIONS COMMISSION

Susan McNeil  
Deputy Chief, Enforcement Bureau

## CONSENT DECREE

### I. INTRODUCTION

The Enforcement Bureau (“Bureau”) of the Federal Communications Commission (the “FCC” or “Commission”) and Caprock Cellular Limited Partnership (“Caprock”), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s investigation regarding Caprock’s compliance with the environmental regulations set forth in Sections 1.1307, 1.1308, and 1.1312 of the FCC’s Rules with respect to the construction of two wireless communications facilities in Crosbyton and Lockney, Texas.<sup>1</sup>

### II. DEFINITIONS

1. For the purposes of this Consent Decree, the following definitions shall apply:
  - a. “Act” means the Communications Act of 1934, as amended;
  - b. “Adopting Order” means the Bureau’s order adopting the terms and conditions of this Consent Decree;
  - c. “Bureau” means the Enforcement Bureau of the Federal Communications Commission;
  - d. “Caprock” means Caprock Cellular Limited Partnership and any telecommunications carrier subsidiary, successor, or communications carrier controlled by Caprock Cellular Limited Partnership;
  - e. “Commission” or “FCC” means the Federal Communications Commission;
  - f. “Effective Date” means the date on which the Bureau releases the Adopting Order;
  - g. “Investigation” means the investigation and any related proceedings commenced by the Wireless Telecommunications Bureau and the Bureau in May 2007 regarding construction of two communications facilities in Texas with respect to possible non-compliance by Caprock with the requirements contained in Sections 1.1307, 1.1308, and 1.1312 of the FCC’s Rules;
  - h. “Parties” means Caprock and the Bureau; and
  - i. “Rules” means the Commission’s regulations set forth in Title 47 of the Code of Federal Regulations.

### III. BACKGROUND

2. Caprock is operated by a general partner, C R Telco, Inc. a wholly owned subsidiary of Cap Rock Telephone Cooperative, Inc., a rural company in west Texas. Caprock provides wireless service to underserved areas of rural Texas. In Lockney, Texas, Caprock is the only wireless service provider in the area. In Crosbyton, Texas, Caprock is one of two wireless service providers.

3. In early 2006, Caprock obtained local zoning consent to construct two communications facilities in Crosbyton (Crosby County) and Lockney (Floyd County), Texas. Specifically, Caprock constructed a 100-foot self-supporting tower in Crosbyton, Texas and a 120-foot self-supporting tower in Lockney, Texas. Caprock began construction on both the Crosbyton and Lockney towers on March 20, 2006. Construction of the Crosbyton tower was completed on May 17, 2006 and construction of the Lockney tower was completed on April 17, 2006.

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<sup>1</sup> 47 C.F.R. §§ 1.1307, 1.1308, and 1.1312.

4. Shortly after the towers were constructed, Caprock realized that the Section 106<sup>2</sup> reviews were not fully completed prior to construction. Caprock immediately contacted Terracon, its environmental consultant, to conduct archeological studies and complete environmental reviews for both towers. Terracon assisted Caprock in filing an FCC Form 620, the “New Tower Submission Packet,” for each of the two facilities with the Texas Historical Commission, the state agency employing the State Historic Preservation Officer (“SHPO”). Terracon also contacted the Crosby County Pioneer Museum regarding the subject facilities and notified federally recognized Indian tribes.

5. With Terracon’s assistance, Caprock completed full environmental reviews, including Section 106 reviews of the sites and concluded that the sites have no direct effect on historic properties and no adverse effects on historic properties in the area of potential effects for visual effects. In addition, Caprock performed archeological surveys for both sites, which indicated that no cultural resources were observed during construction or damaged by construction activities at either the Crosbyton or Lockney tower sites. Caprock also completed the tribal participation process under the FCC’s Nationwide Programmatic Agreement.<sup>3</sup> No federally recognized Indian tribe indicated an interest in the subject towers.

6. In response to Caprock’s FCC Forms 620, the Texas SHPO replied by separate letters dated March 21, 2007, stating that it was foreclosed from reviewing the constructed towers.<sup>4</sup> On April 24, 2007, Caprock sent a letter to the FCC disclosing that it had constructed two communications facilities prior to the completion of the Section 106 review and requesting that the FCC initiate consultation with the Texas SHPO to resolve the instant case.<sup>5</sup> The FCC’s Wireless Telecommunications Bureau has reviewed Caprock’s Forms 620 and supporting documentation, and concurs that the towers do not have an adverse effect on historic properties.

#### IV. TERMS OF AGREEMENT

7. Caprock agrees that the Bureau has jurisdiction over it and the subject matter contained in this Consent Decree and the authority to enter into and adopt this Consent Decree.

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<sup>2</sup> Section 106 of the National Historic Preservation Act (“NHPA”), 16 U.S.C. § 470f, requires a federal agency to consider the effects of its federal undertakings, including actions that it authorizes or approves, on historic properties prior to issuing federal licenses, permits or approvals. In considering such effects, the NHPA requires a federal agency to consider the views of expert agencies. Specifically, the NHPA requires the federal agency to consider the views of the Advisory Council on Historic Preservation, the agency tasked with the responsibility for implementing the NHPA, the appropriate State Historic Preservation Officer, and, if affected historic properties are of religious or cultural significance to Indian tribes or Native Hawaiian organizations, their representatives. *See* 16 U.S.C. §§ 470a(a)(3), (d)(6)(B), 470f, 470i. Consistent with the Advisory Council’s regulations, the Commission’s environmental rules delegate the task of identification and consideration of the effects that proposed facilities may have on historic properties to its licensees, permittees and applicants, but the Commission remains ultimately responsible. *See* 47 C.F.R. § 1.1307(a)(4); *see also* 36 C.F.R. § 800.2(a)(3); *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, Report and Order, 20 FCC Rcd 1073 (2004), at 1076-77; *clarified*, 20 FCC Rcd 17995 (2005), *aff’d*, *CTIA-The Wireless Ass’n. v. FCC*, No. 05-1008 (D.C. Cir. September 26, 2006).

<sup>3</sup> 47 C.F.R. Part 1, Appendix C, Section IV.

<sup>4</sup> Letters from F. Lawrence Oaks, Texas State Historic Preservation Officer to David Martin and Julio Aguilar, Terracon (March 21, 2007) (denying Caprock’s request for review of its Crosbyton and Lockney tower sites).

<sup>5</sup> Letter from Marjorie Spivak and Rebecca Murphy, Bennet & Bennet, PLLC to Dan Abeyta, Assistant Chief, NEPA Adjudications (April 24, 2007) (notifying the FCC of Caprock’s failure to complete the Section 106 review process).

8. The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order.

9. The Parties agree that this Consent Decree shall constitute a final settlement of the Investigation. In express reliance on the covenants and representations contained herein and to avoid the further expenditure of scarce public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of these matters and in accordance with the terms of this Consent Decree, Caprock agrees to the terms, conditions, and procedures contained herein.

10. The Parties agree that this Consent Decree shall become binding on the Parties on the Effective Date. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other final order of the Commission and any violation of the terms or conditions of this Consent Decree shall constitute a violation of a Commission order.

11. The Parties agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding or determination regarding any compliance or noncompliance by Caprock with the requirements of the Act or the Commission's Rules or orders. The Parties agree that this Consent Decree is for settlement purposes only, and that by agreeing to this Consent Decree, Caprock does not admit or deny any noncompliance, violation, or liability associated with or arising from its actions or omissions involving the Act or the Rules which are the subject of this Consent Decree.

12. Caprock agrees that it will make a voluntary contribution to the United States Treasury in the amount of five thousand five hundred dollars (\$5,500.00) for each tower, for a total of eleven thousand dollars (\$11,000.00). The payment will be made within 30 days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

13. To resolve and terminate the Investigation, and to ensure compliance with the FCC's environmental rules, Caprock also agrees to the following conditions.

- a. Caprock will implement on a company wide basis detailed procedures to ensure environmental compliance. These procedures may be altered from time to time if Caprock determines that other procedures may better enable it to comply with the FCC environmental requirements. Caprock shall notify the Bureau and the Wireless Telecommunications Bureau in writing regarding such modifications at least 25 calendar days before they take effect and either the Bureau or the Wireless Telecommunications Bureau may disapprove such modification within 25 calendar days of their receipt of Caprock's notification.
- b. Caprock has recently commissioned and made part of its internal procedures "A Scope of Work For Compliance With the FCC's Environmental Rules" manual. The "Scope of Work" manual describes the FCC's environmental requirements and the federal laws and policies that are cited in or related to the FCC's environmental rules. It also spells out in

detail the responsibilities for environmental compliance of Caprock's outside consultants dealing with tower construction and those employees within Caprock who supervise the consultants and the methods by which environmental compliance will be assured at each stage of the tower construction process. Attached to the "Scope of Work" manual are "checklists" by which responsible Caprock employees may track environmental compliance for each new and collocated tower.

- c. Caprock will provide annual training to its employees responsible for environmental compliance to ensure that they are aware of their responsibilities to ensure compliance with environmental requirements by Caprock. Caprock will oversee any consultant it may employ to ensure compliance with the environmental requirements.
- d. Caprock has recently appointed an experienced Regulatory Compliance Manager, who is thoroughly familiar with the FCC's environmental requirements. He will monitor and supervise Caprock's regulatory compliance efforts.
- e. Caprock will submit reports, on an annual basis, to the Enforcement Bureau and the Wireless Telecommunications Bureau identifying all of Caprock's Section 106 reviews that were active during the reporting period. For each such Section 106 review, Caprock will specify the dates of any FCC Form 620 submission to the State Historic Preservation Officer and notification to tribes, local government and the public, as well as the resolution or current status of the review.

14. The Bureau agrees that, in the absence of new material evidence, it will not institute, on its own motion or in response to third-party objection, any new proceeding, formal or informal, or take any action on its own motion against Caprock for possible past violations of the environmental regulations in Part 1 of the Rules that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, or recommend to the Commission, any new proceeding, formal or informal, or to take any action on its own motion, against Caprock concerning the matters that were the subject of the Investigation. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in this Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion, or recommend to the Commission, any proceeding, formal or informal, or take any action on its own motion, against Caprock with respect to its basic qualifications, including its character qualifications, to be a Commission licensee. Nothing in this Consent Decree shall prevent the Commission from instituting investigations or enforcement proceedings against Caprock in the event of any other alleged misconduct that violates this Consent Decree or that violates any provision of the Act or Rules.

15. The Parties agree that each is required to comply with each individual condition of this Consent Decree. Each specific condition is a separate condition of the Consent Decree as approved. To the extent that Caprock fails to satisfy any condition, in the absence of Commission alteration of the condition, it will be deemed noncompliant and may be subject to possible future enforcement action with respect to such failure to satisfy the condition.

16. Caprock waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order, provided the Order adopts this Consent Decree without change, addition, or modification.

17. The Parties agree that the effectiveness of this Consent Decree is expressly contingent upon the issuance of the Adopting Order, provided the Adopting Order adopts the Consent Decree without change, addition or modification.

18. The Parties agree that if either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Caprock nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Caprock and the Commission will waive any statutory right to a trial de novo regarding the terms or validity of the Consent Decree. Caprock, however, may present evidence that it has not violated the Consent Decree.

19. Caprock agrees that any material violation of any term of this Consent Decree shall constitute a separate violation of a Commission order, entitling the Commission to exercise any rights and remedies attendant to the enforcement of a Commission order. The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which Caprock does not consent), that provision will be superseded by such Commission rule or order.

20. This Consent Decree cannot be modified without the advance written consent of both Parties.

21. In the event this Consent Decree is rendered invalid by a court of competent jurisdiction, it shall become null and void and may not be used in any manner, in any legal proceeding.

22. The Parties agree that the requirements of this Consent Decree shall expire two (2) years after the Effective Date.

23. The Consent Decree may be signed in counterparts.

For Caprock Cellular Limited Partnership:

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Date	Jim Whitefield
	Chief Executive Officer

For the Enforcement Bureau:

_____	_____
Date	Susan McNeil
	Deputy Chief, Enforcement Bureau